

3566. Adulteration and misbranding of so-called malt extract. U. S. v. John F. Betz et al. (John F. Betz & Son, Ltd.). Plea of nolo contendere. Fine, \$20. (F. & D. No. 5594. I. S. No. 11804-e.)

On April 3, 1914, the United States attorney for the Eastern District of Pennsylvania, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against John F. Betz, David Rollo, and Michael F. Maher, a copartnership, doing business under and by the firm name and style of John F. Betz & Son (Ltd.), Philadelphia, Pa., alleging shipment by said defendants, in violation of the Food and Drugs Act, on or about May 15, 1913, from the State of Pennsylvania into the State of Maryland, of a quantity of so-called malt extract which was adulterated and misbranded. The product was labeled: (Neck label) "This preparation contains not more than: Alcohol, 4 per cent. Guaranteed under The Food and Drugs Act, June 30, 1906." (Principal label) "Genuine malt Extract Alcohol, 4% A Pleasant and Valuable Nutritive Tonic. This is a perfectly pure, and extremely agreeable preparation of malted barley with hops, containing the nutritive and digestive properties of malt, with the well-known bitter tonic qualities of hops. The very low percentage of alcohol contained in it (less than four per cent) and the large amount of nutritious extractive matter (twelve per cent) render it the most desirable preparation for administration to nursing women, invalids, children, etc. In the usual dose of a wineglassful three or four times daily, it excites a copious flow of milk, and supplies strength to meet the great drain upon the system experienced during lactation. It is no less useful in producing flesh and augmenting fat, its power to create animal heat establishing the necessary conditions. As a tonic in the true sense of the word, it is incomparable, and those persons suffering from vital exhaustion, loss of appetite, and general debility, as well as aged persons, and those of a cold temperament, will derive the greatest comfort and benefit from its use. The adult dose is a wineglassful, taken three or four times daily; children in proportion. It is best taken during or in case of loss of appetite, immediately before meals. Distributed by John Street Drug Store A. C. Reynolds, Mgr. John and Mosher Streets, Baltimore, Md. Guaranteed under the Food and Drugs Act of June 30, 1906."

Analysis of a sample of the product by the Bureau of Chemistry of this department showed the following results:

Alcohol (per cent by volume).....	7. 10
Extract (per cent by weight).....	7. 23
Extract original wort (per cent by weight).....	18. 61
Degree fermentation.....	61. 15
Volatile acid, as acetic (grams per 100 cc).....	0. 022
Total acid, as lactic (grams per 100 cc).....	0. 405
Maltose (per cent).....	2. 26
Dextrin (per cent).....	2. 23
Ash (per cent).....	0. 448
Protein (per cent).....	0. 37
P ₂ O ₅ (per cent).....	0. 040
Undetermined (per cent).....	1. 92
Polarization (°V.).....	+34
Color (degrees, Lovibond, in ¼-inch cell).....	61

Adulteration of the product considered as a food was alleged in the information for the reason that a substance, namely, a fermented beverage made from malt, hops, and another cereal or cereal product, or malt substitute, had been substituted wholly or in part for genuine malt extract which said article purported to be. Adulteration of the product considered as a drug was alleged for the reason that its strength and purity fell below the professed standard and quality under which it was sold—that is to say, said article was invoiced, labeled, and sold as malt extract containing 4 per cent

of alcohol and 12 per cent of extractive matter, whereas, in truth and in fact, said article was not malt extract containing 4 per cent of alcohol and 12 per cent of extractive matter, but was a fermented beverage made from malt, hops, and another cereal or cereal product or malt substitute, and contained, to wit, 7.1 per cent of alcohol by volume and to wit, 7.23 per cent of extractive matter. Misbranding of the product considered as a food was alleged for the reason that the statements "Genuine Malt Extract" and "Preparation of malted barley with hops," borne on the labels of the bottles in which the article was shipped and delivered for shipment, were false and misleading because they were calculated to convey to the purchaser thereof the impression that the article was an extract of malt when, as a matter of fact, it was not an extract of malt, but was a fermented beverage made from malt, hops, and another cereal or cereal product or malt substitute, and, further, in that the statements, "Alcohol four per cent," and "The very low percentage of alcohol contained in it (less than four per cent)," borne on the labels as aforesaid, were false and misleading because they were calculated to convey to the purchaser the impression that the article contained only 4 per cent of alcohol, whereas, in truth and in fact, it contained a much larger percentage of alcohol, to wit, 7.1 per cent by volume; further, in that the statement, "The large amount of nutritious extractive matter (twelve per cent)," borne on the labels as aforesaid, was false and misleading because it was calculated to convey to purchasers the impression that the article contained 12 per cent of extractive matter, whereas, in truth and in fact, it did not contain 12 per cent of extractive matter but a much smaller percentage, to wit, 7.23 per cent, of extractive matter; and further, in that said article when shipped and delivered for shipment as aforesaid was labeled and branded so as to deceive and mislead the purchaser into the belief that it was a genuine malt extract containing 4 per cent of alcohol and 12 per cent of extractive matter, whereas, in truth and in fact, it was not a genuine malt extract containing 4 per cent of alcohol and 12 per cent of extractive matter, but was a fermented beverage made from malt, hops, and another cereal or cereal product or malt substitute containing, to wit, 7.1 per cent of alcohol by volume, and to wit, 7.23 per cent of extractive matter. Misbranding of the product considered as a drug was alleged for the reason that the statements "Genuine Malt Extract" and "Preparation of malted barley with hops," borne on the labels as aforesaid, were false and misleading because they were calculated to convey to the purchaser thereof the impression that the article was an extract of malt, when, as a matter of fact, it was not an extract of malt, but was a fermented beverage made from malt, hops, and another cereal or cereal product or malt substitute; and for the further reason that the statements, "Alcohol 4%" and "The very low percentage of alcohol contained in it (less than four per cent)," borne on the labels as aforesaid, were false and misleading because they were calculated to convey to the purchaser the impression that the article contained only 4 per cent of alcohol, whereas, in truth and in fact, it contained a much larger percentage of alcohol, to wit, 7.1 per cent by volume; and further the statement, "The large amount of nutritious extractive matter (twelve per cent)," borne on the labels as aforesaid, was false and misleading because it was calculated to convey to the purchaser thereof the impression that the article contained 12 per cent of extractive matter, whereas, in truth and in fact, it did not contain 12 per cent of extractive matter, but a much lower percentage, to wit, 7.23 per cent of extractive matter.

On June 19, 1914, a plea of *nolo contendere* was entered on behalf of the defendants, and the court imposed a fine of \$20.

CARL VROOMAN, *Acting Secretary of Agriculture.*

WASHINGTON, D. C., *January 13, 1915.*